

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION***

**CIVIL REVISION APPLICATION NO.176 OF 2016**

Rajendra Balaso Narute

... Applicant

Vs

Shri Suresh Bajrang Dombale and Anr.

... Respondents

...

Mr. Prashant P. Kulkarni for the Applicant.

Mr. Amol L. Dhumal for the Respondents.

**CORAM : SANDEEP K. SHINDE J.**

**DATE : AUGUST 6, 2019**

**P.C. :**

Applicant is the defendant no.1 in the Regular Civil Suit No.57 of 2013 instituted by the respondent no.1 herein. Respondent No.2 is the defendant no.2 in the said suit.

2 By this Civil Revision Application, applicant is challenging the order dated 17<sup>th</sup> February, 2016 passed by the learned Civil Judge, Junior Division, Phaltan rejecting his application for framing preliminary issue.

3 Respondent No.1, Suresh instituted Regular Civil Suit No.57 of 2013 for declaration of his half share in land Gat No.139/9 and for possession thereof. It is his case that the suit land being joint

family property, his son Bapurao Suresh Bambale (Defendant No.2) has had no right to sell it to the Rajendra Balaso Narute (Petitioner herein). He, therefore, sought declaration as aforesaid and also sought possession of his share therein.

4           Applicant/defendant no.1 requested the Trial Court to frame the preliminary issues as to whether the suit is maintainable, considering that Suresh Bambale (Plaintiff) had instituted Regular Civil Suit No.45 of 2009 in respect of suit land on the cause of action which is similar to the cause as pleaded in the present suit. It is the applicant's case that the previous suit, i.e., Regular Civil Suit No.45 of 2009 has been dismissed and as such, present suit was not maintainable.

5           The learned Trial Judge vide order dated 17<sup>th</sup> February, 2016 declined to frame preliminary issue on the ground that the issues were already framed on 10<sup>th</sup> September, 2013 in the present suit. It is against this order, applicant has preferred this Revision Application.

6           I have perused the plaint in the previous Suit, i.e. Regular Civil Suit No.45 of 2009 and in the present suit. In my view, previous suit may have bearing over the present suit and, therefore, the learned Trial Court ought to have framed the preliminary issue as the issue of maintainability will go to the root of the matter.

7           In view thereof, the learned Trial Court shall frame the preliminary issue and answer the same without being influenced by the order of this Court.

8           Application is allowed in the aforesaid terms and disposed of accordingly.

**(SANDEEP K. SHINDE, J.)**